FARAD CONTINUATION SHEET NO.:
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.4353 OF 2005
IN
FIRST APPEAL NO.1805 OF 2005

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.A.Y.Sakhare i/by M/s.YKS Legal for applicants.

Mr.V.Z. Kankaria for respondent.

CORAM : H.L GOKHALE &
SMT.R.S.DALVI, JJ.
DATED : 18th October 2005

P.C. :

1. Heard Mr.Sakhare in support of this Application Mr.Kankaria appears for the respondent.

2. This Civil Application seeks stay of the judgment and decree dated 5th March 2005 in Special Civil Suit No.310 of 2002. The judgment and decree is for Rs.89,84,288/- with interest at the rate of 18% p.a. from 17th May 1997 and costs.

3. Mr.Sakhare, learned Counsel appearing for the applicants, has raised various objections to the decree, including that the learned Judge should not have given the relief when according to the applicants Clause 3(a) of the tender document was the applicable clause. That will be an aspect which will be gone into when the Appeal is finally heard and decided. He has, however, pointed out that in para-21 of the judgment, the learned Judge has awarded the claim of Rs.12,23,016/- for washed away embankment. The paragraph itself states that this is a new claim not made in the Plaint. He, therefore, submits that from the decretal amount, this amount ought to be deducted when it comes to requiring the applicants to make the deposit. We asked Mr.Kankaria, learned Counsel appearing for the respondent, to

point out as to whether this claim is justified in the Plaint. He has made his submissions, though we have not been persuaded by him to accept the submissions.

4. In the circumstances, there will be a stay of the impugned judgment and decree on the applicants-appellants depositing a sum of Rs.77,61,272/- with interest at the rate of 18% p.a. and costs in the trial Court. We are passing this order under Order 41 Rule 1(3) of the Code of Civil Procedure, 1908, as amended in the State of Maharashtra, which empowers the Court to dispense with the deposit or security where it deems fit to do so for sufficient cause.

5. Now, if we see paragraphs 18, 20 and 21 of the impugned judgment, we find the manner in which this figure of

Rs.89,84,288/- has been awarded. In our view, prima facie, the respondents have a case for the items which are mentioned in paragraphs 18(1) and (2) and it would be justifiable under Section 70 of the Contract Act. The total of these two items comes to Rs.29,20,170/-. The amount arrived at 18% interest over this figure will be permitted to be withdrawn by the respondent by giving a security to the satisfaction of the trial Court. As far as the remaining amount from Rs.77,61,272/- is concerned, if the respondent wants to withdraw the same, he will give a Bank Guarantee of a Nationalised Bank which will be kept alive till the hearing and disposal of the Appeal. Initially the Bank Guarantee may be given for 37 months and then it may be renewed by 13 months at a time. The applicants-appellants will deposit

this amount within 12 weeks and intimate to the respondent accordingly.

6. It will be open to the respondent to withdraw the amount of Rs.2920170/- with interest at 18% against the security within eight weeks and the remaining amount against the Bank Guarantee within eight weeks thereafter. In the event of the respondent not withdrawing either of the two parts of the amounts against the security or against the Bank Guarantee, the trial Court will invest those amounts in a Nationalised Bank for 37 months to begin with and continue to renew the deposit by 13 months at a time till the further orders are received from this Court. Civil Application stands disposed of.

(H.L.GOKHALE, J.)

(SMT.R.S.DALVI, J.)